IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

First Appeal No. 1042 of 1987

The State of Maharashtra through
The Special Land Acquisition
Officer, Metro Centre No.3, Panvel
Raigad ..Appellant

vs.

1.Shri Bapu Umaji Mali (Kandpile)
since deceased by his heirs and
legal representatives :

1A. Anusaya Bapu Mali (Widow)
(Kandpile)

1C. Shri Muralidhar Bapu Kandpile

1F. Smt.Yeshoda Vithal Raskar

1I. Smt.Hirabai Devidas Ghodekar

2. Shri Kashinath Umaji Mali ..Respondents

Shri K.K.Tated, A.G.P. for appellants.
Shri Kiran J.Kandpile for respondent nos.1A and 1B

CORAM: S.B.MHASE J.
28th July, 2006

ORAL JUDGMENT:

1. This first appeal is directed against the judgment and decree passed in Land Acquisition Reference No.59 of 1982 on 8th January, 1986 by the Civil Judge, Sr.Dn., Alibag at Alibag. The lands of the respondents were acquired by the State of Maharashtra through Special Land Acquisition

Officer, Metro Centre No.3, Panvel-Raigad for CIDCO. Initially by Award dated 16th June, 1981 compensation was granted at the rate of Rs.4/- per sq.meter in respect of land classified as I/D and at the rate of Rs.5/- per sq.meter to the land classified as I/CII and thus in respect of the lands of the respondents the total amount of compensation was fixed at Rs.36,140 and upon this amount solatium etc. was paid. However, since the respondents were aggrieved by the said Award, they accepted the amount under protest and filed Land Reference No.59 of 1982 before the Special Land Acquisition Officer which was in turn transferred to the Civil Judge, Sr.Dn., Raigad. After hearing both sides, the Civil Judge, Sr.Dn., Alibag enhanced the amount of compensation to Rs.69,849 including solatium. The Trial Court further directed 12% additional amount of compensation from 8th March, 1979 to 16th June, 1981 and interest at the rate of 15% from 16th June, 1981 till the date of payment and further directed that the cost should be borne by the respondents. The said judgment and decree and/or award passed by the reference court is challenged by this first appeal.

2. The learned Counsel Shri Tated appearing for

the appellants raised only two grounds. Firstly, he contended that the rates of Rs.4/- and Rs.5/- per sq.meter as granted by the Special Land Acquisition Officer was just and proper and further enhancement of the said rates at Rs.10/- per sq.meter by Reference Court is illegal and unjust and, therefore, the amount of enhanced compensation and solatium thereon be quashed and set aside. Secondly, he contended that the reference court committed an error in granting the amount at the rate of 12% by way of additional compensation from 8th March, 1979 to 16th June, 1981 invoking the provisions of section 23(1-A) of the Land Acquisition Act. Since commencement of the acquisition proceedings and award in the present matter was passed prior to the commencement of the Amending Act No.68 of 1984 and, therefore, that order be quashed and set aside.

3. So far as the first contention raised by the learned counsel in respect of the rate is concerned, this Court does not find any merit in the said submission. It is to be noted that the respondents have examined one Shri Wagle who is Architect and approved valuer of the Bank of India for Raigad District. According to him the

compensation should have been granted at the rate of Rs.25/- per sq.meter, however, the Court has considered the rising prices from 1962 onwards till. the date of award and has come to the conclusion that the compensation at the rate of Rs.10/- per sq.meter is proper. It further requires to be mentioned that this Court in First Appeal No. 771 of 1977 and 591 of 1978 has considered the prices in respect of the lands which were acquired for the same project from the said vicinity and has arrived at the conclusion that Rs.10/- per sq.meter is the proper rate of compensation to be awarded to the claimants. Thus the Reference Court has considered the expert evidence and evidence of the sale transactions from 1962 till the date of award and also the judgment of this Court in the above referred two first appeals and thereafter has arrived at the conclusion that Rs.10/- per sq.meter is the proper rate for fixing the compensation of the acquired lands. This Court finds that the view taken by the Reference Court is just and proper and no interference in respect of this part of the judgment is required.

4. This takes me to another important point which

has been raised by the learned Counsel, namely, applicability of section 23(1-A) to the facts of the present case.

5. The admitted facts for the purpose of this aspect are as follows:

6. That the notification under section 4 of the Land Acquisition Act was issued on 3rd February, 1970. The possession of the land was taken by the appellants and handed over to CIDCO on 5th March, 1979 while the award under sec.11 of the Land Acquisition Act was passed by the appellant on 16th June, 1981 and thereafter the land acquisition reference No.59 of 1982 was filed. Relying upon these facts the learned Counsel for the appellants submitted that the provisions of the Land Acquisition Act as amended by the amending Act 68 of 1984 are not applicable and more specifically since section 23(1-A) was introduced by the said amendment those provisions will not be applicable and, therefore, the amount of 12% component which was granted by reference Court is improper and illegal. He relied upon several judgments of the Apex Court and basically 1994(5) SCC 593 in the matter of K.S.Paripoornan Vs. State of Kerala and

others. As against this the learned Counsel Shri Kandpile appearing for the respondents relied upon (1995) 5 S.C.C.282 in the matter of Hindustan Paper Corpn.Ltd. Vs.Sakharam Gour and others. Several amendments were effected in the Land Acquisition Act by Amending Act 68 of 1984, however, this Court presently is concerned with the amended section 23(1-A) of the said act and its applicability to the present matter. In fact, the point is no more resintegra for this Court but to avoid repetition of the point being raised repeatedly in the matter this Court desires to keep on record the manner in which this point has been dealt with by the Apex Court. The first case which appears to have dealt with this aspect is 1990(1) S.C.C.277 in the matter of Union of India and others Vs. Filip Tiago De Gama of Vedem Vasco De Gama. The Apex Court considered section 23 and section 30 of the Amending Act No.68 of 1984 and has held in paras 20 and 21 that "the objective words used in this sub-section are similar to those that are used in Section 23(2). It is also a part of the scheme for determining compensation under section 23(1) of the Act and also operates at the market value of the land acquired. It is plainly and distinctly prospective in its operation since market value has

to be determined as on the date of publication of notification under Section 4(1). But the legislature has given new starting point for operation of Section 23(1-A) for certain cases mentioned in section 30 sub-sections (1)(a) and (b) of the Amending Act. Entitlement of additional amount provided under section 23(1-A) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Since Section 30 sub-section (1) refers to the Award of the Collector and and does not refer to the Court's award which is used only in section 30 sub-section (1) and applying the said ratio the Court observed in the facts of that case that as on April 30, 1982 there were no proceedings pending before the Collector, section 30 sub-section (1)(a) is not attracted to the case. Since the proceedings for acquisition commenced before April 30, 1982, section 30 sub-section (1)(b) is also not applicable to the case and the claimant is, therefore, not entitled to additional amount provided under sec.23(1-A). However, this was a view of the Division Bench of the Supreme Court as is reflected from the coram of the said case. Similar point was considered by 3 Judges Bench of the Apex Court in (1992) 1 Supreme Court

Cases 673 in the matter of Union of India and another Vs. Zora Singh and others. However, considering the said provisions and also making a reference to the above referred case and Full Bench judgment of this Court reported in 1987 Mh.L.J. 564 the above referred judgment along with the Full Bench judgment of this Court was overruled by the Apex Court and it was observed as under:

> "Section 23(1-A) of the Principal Act confers substantive right to claim the additional amount and, therefore, it can have only prospective application unless the language in which the provisions are couched, read in the context, shows that the intention of the legislature was to give retrospective effect to them. The expression "award" used in Section 23(1-A) suggests that the intention of the legislature was to make the provisions of the said sub-section to cases where the Collector had yet to make his award or the trial court hearing the reference under section 18 had still to make its award after the coming into force of the said sub-section 23(1-A) was by a deeming

provision , made also applicable to every proceeding for acquisition of land under the Act where the Collector had not make his award of compensation by April 30, 1982. So on a plain grammatical construction of Section 23(1-A) read with Section 30(1)(a) of the Amendment Act of 1984, the benefit conferred by Section 30(1)(a) is limited to only those cases where the Collector as well as the Court have made their respective awards between April 30, 1982 and September 24, 1984."

"On reading Section 23(1-A) itself, on its plain language it appears that the duty was cast on the reference Court to award the additional amount in all cases which are pending before that Court on September 24, 1984 even if the award of the Collector was made before April 30, 1982.

7. It appears that because of this conflicting view in the judgment of the Apex Court as referred to above the matter was referred to the Constitution Bench and the judgment of the Constitution Bench is reported in (1994) 5 Supreme

Court Cases 593 in the matter of K.S.Paripoornan Vs. State of Kerala and others. This is a judgment by majority i.e. 3 against 2. The question which was formulated was as follows:

> "Whether the additional amount payable at 12% on the market value under sec.23(1-A) is restricted to matters referred to in clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act or is to be awarded in every case where the reference was pending before the reference Court on 24.9.1984 (the date of commencement of the amending Act) irrespective of the date on which the award was made by the Collector.

This question has been answered by majority in para 80 of the said judgment. It is observed in para 74 as under:

> "If sub-section (1-A) of Section 23 is construed in the light of the provisions contained in sub-section (1) of section 30 of the amending Act there is no escape from the conclusion that Section 23(1-A), by itself, has no application to proceedings

> which had commenced prior to the enactment of the amending Act and the applicability of the said provision to pending proceedings is covered exclusively by sub-section (1) of section 30 of the amending Act."

It is further observed in para 75 as under:

> "Merely because sub-section (1) of Section 30 only refers to award made by the Collector while sub-section (2) of Section 30 also refers to an award made by the Court as well as the order passed by the High Court or the Supreme Court in appeal against such award does not mean that Section 23(1-A) was intended to have application to all proceedings which were pending before the civil Court on the date of the commencement of the amending Act. The difference in the phraseology in sub-sections (1) and (2) of Section 30 only indicates the limited nature of the retrospectivity that has been given to provisions contained in Section 23(1-A) under Section 30(1) as compared to that given to the provisions of Sections 23(2)

> and 28 under Section 30(2). The limited scope of the retrospectivity that has been conferred in respect of Section 23(1-A) under sub-section (1) of Section 30 does not lend support to the contention that the scope of such retrospectivity should be enlarged by reading such further retrospectivity into the provisions of Section 23(1-A). For the reasons aforementioned we are of the view that in relation to proceedings which were initiated prior to the date of the commencement of the amending Act Section 23(1-A) would be applicable only to those cases which fall within the ambit of clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act."

Thus in para 75 the Apex Court further observed that:

> " for the reasons aforementioned we are unable to subscribe to the view taken in Zora Singh that sub-section (1-A) of Section 23 would apply to all proceedings pending in the reference Court on the date of

> commencement of the amending Act irrespective of the date on which award was made by the Collector. In our opinion the provisions of Section 23(1-A) of the principal Act and Section 30(1) of the amending Act have been correctly construed in Filip Tiago to mean that the obligation to pay additional amount in respect of proceedings initiated before the date of commencement of the amending Act is confined to the matters covered by clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act and we endorse the said view."

Ultimately in para 80 of the said judgment the Apex Court answered the referred question as follows:

> "For the reasons aforementioned it must be concluded that in respect of acquisition proceedings initiated prior to date of commencement of the amending Act the payment of the additional amount payable under Section 23(1-A) of the Act will be restricted to matters referred to in clause (a) and (b) of sub-section (1) of Section 30 of the amending Act. Zora Singh inso far as

it holds that the said amount is payable in all cases where the reference was pending before the reference Court on 24.9.1984, irrespective of the date on which the award was made by the Collector, does not lay down the correct law."

8 Thus ultimately the conflict between the two judgments, namely, Zora Singh and Filip Tiago was resolved by the Apex Court. Similar is the view taken in the matters of S.A.Jain College Trust and Management Society Vs.State of Haryana and another reported in (1995) 3 Supreme Court Cases 74; Hindustan Paper Corpn. Ltd. Vs. Sakharam Gour and Others reported in (1995) 5 Supreme Court Cases 282; Special Land Acquisition Officer Vs. N.S.Takkalaki and others reported in (1995) 5 Supreme Court cases 686; State of Haryana Vs. Kamla (Smt.) and others reported in (1996) 4 Supreme Court Cases 535; Rafiq Mohd. Vs. State Government of M.P. and others reported in (1996) 8 Supreme Court Cases 482; Puttahonnamma (Smt) Vs. C.Gangadhara Murthy and others reported in (1996)8 Supreme Court Cases 483; Kashiben Bhikabai and others Vs. Special Land Acquisition Officer and another reported in (2002) 2 Supreme Court Cases

605; Gaziabad Development Authority Vs. Anoop Singh and another reported in AIR 2003 Supreme Court 1004; State of Maharashtra Vs.Mehanunnisa Mahamadalli Khot (since deceased, through legal heirs) reported in 2004(6) Bom.C.R.301 and State of Maharashtra Vs. Bhupendra Thakarsi Parekh reported in 2005(3) Bom.C.R.386. I have gone through these judgments. No doubt it is observed that the claimants are entitled to 12% component of the additional amount under sec.23(1-A) of the Act in the facts where the notification under sec.4 of the Land Acquisition Act was published on 3rd July, 1979 i.e. prior to the amending Act No.68 of 1984 and that on reference under sec.88 the reference court enhanced the market value and first appeal no.81 of 1986 was decided on 20th January, 1989. However, it requires to be stated that the date on which the award has been passed is not reflected in the said judgment because even if the notification under sec.4 is issued prior to amending Act of 1984 but if the acquisition proceedings are pending on the date when the Bill was introduced in the Parliament then under sec.30(1)(a) of the amending Act of 1984 the benefit of section 23(1-A) can be extended as has been observed in the above referred cases. However, this important fact is not

reflected from the said judgment. However, since the benefit has been extended in view of the established ratio of the Apex Court as laid down by the Constitutional Bench and followed by various judgments of the Supreme Court and this Court, it will have to be inferred that the award in the said reported cases upon which the respondents rely must have been passed after the Bill was introduced in the Parliament so as to clover the facts involved in the case under sec.30(1)(a) of the amending Act, 1984. I do not find that this judgment is of any help to the respondents. I further do not find that this judgment in any way creates a conflict in respect of the ratio laid down by the Constitution Bench. By last resort the learned Counsel relied upon the Full Bench judgment of this Court report in 1987 Mh.L.J.564 in the matter of Jaiwant Laxman P.Sardesai Vs. Government of Goa, Daman and Diu and another. However, this Court makes it clear that this judgment has been overruled by the Supreme Court by its various judgments referred to above. In the result, I find that there is a merit in the point raised by the learned Counsel for the State that the reference court committed an error in awarding 12% additional amount of compensation from 8th March, 1979 to 16th June, 1981 and,

therefore, the said direction is required to be quashed and set aside. Appeal is, therefore, partly allowed. The compensation, solatium and other benefits which have been extended by the reference court while deciding the market value of the land at the rate of Rs.10/- per sq.meter is maintained. However, the additional component at the rate of 12% additional amount of compensation from 8th March, 1979 to 16th June, 1981 in view of provisions of sec.2l3(1-A) of the Land Acquisition Act is hereby quashed and set aside. If the said additional amount of compensation at 12% is already paid it shall be recovered from the respondents/original plaintiffs. I am not inclined to grant interest in the present matter because the reference was filed in 1982 when the amending Act was not brought into force and there was no demand by the claimants/respondents. It was the reference court which relying upon the provisions of sec.23(1-A) has extended the benefits to them when the matter was decided in 1986. Taking into consideration the special consideration interest is not granted. It is further directed that the respondents shall redeposit the amount within a period of six months.

(S.B.MHASE J.)